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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|---|-------------|----------------------|---------------------|------------------|
| 10/087,562 | 03/01/2002 | Richard K. Meissner | 4692-00001 | 3953 |
| 26753 | 7590 | 06/28/2004 | EXAMINER | |
| ANDRUS, SCEALES, STARKE & SAWALL, LLP 100 EAST WISCONSIN AVENUE, SUITE 1100 MILWAUKEE, WI 53202 | | | MATHEW, FENN C | |
| | | | ART UNIT | PAPER NUMBER |
| | | | 3764 | |

DATE MAILED: 06/28/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/087,562

Applicant(s)

MEISSNER, RICHARD K.

Examiner

Fenn C Mathew

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 26 March 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-17 is/are pending in the application.
- 4a) Of the above claim(s) 11 and 14-16 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-5, 8-10, 12 and 17 is/are rejected.
- 7) ☒ Claim(s) 6, 7 and 13 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 03/02/2002.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Election/Restrictions

1. Claims 11, and 14-16 withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected claims, there being no allowable generic or linking claim. Election was made **without** traverse in paper dated 03/26/2004.

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1-5, 8-10, 12, and 17 are rejected under 35 U.S.C. 102(b) as being anticipated by Wilson (U.S. 6,083,142). Referring to claim 1, Wilson discloses an apparatus comprising a generally rigid framework (28) capable of being removed from a support surface (34), capable of being placed adjacent a body of water, panel structure mounted on the framework (see fig. 3) for defining a climbing surface, the panel structure carrying a plurality of climbing holds (column 3, lines 15-26), and a support structure secured between the framework and the climbing surface in a substantially vertical orientation.

3. Referring to claim 2, Wilson discloses the framework having an inverted U-shape including a pair of parallel legs connected together by an integral bight portion (see fig. 3).

4. Referring to claim 3, Wilson discloses the framework legs having bottom ends with mounting devices that are removably secured to an end of the support surface.

5. Referring to claim 4, Wilson discloses the mounting devices allowing pivotal movement of the framework.

6. Referring to claim 5, Wilson discloses provisions added to the mounting device in order to prevent pivotal movement once the climbing surface is set in a vertical orientation.

7. Referring to claim 8, Wilson discloses the framework and climbing surface movable between a use and non-use position.

8. Referring to claim 9, Wilson discloses the panel structure is modular, and including multiple panels adjacently joined and removably fastened to the framework.

9. Referring to claim 10, Wilson discloses in figure 3, the support structure comprising a pair of support members attached to a connecting plate (as broadly claimed), attached to a side of the support surface behind the framework.

10. Referring to claim 17, Wilson discloses a framework having a removable attachment adapted to be connected to a support surface located adjacent a body of water, at least one panel mounted to the framework for defining a climbing surface, the panel being provided with a series of climbing holds, and a support structure secured to

the framework and adapted to be fastened to the support surface for maintaining the framework in a substantially vertical position during use.

Claim Rejections - 35 USC § 103

11. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

12. Claim 12 is rejected under 35 U.S.C. 103(a) as being unpatentable over Wilson in view of Virta (WO 95/31257). Wilson discloses the claimed invention except for the support structure including a single support member connected between the bight portion of the framework. Virta teaches in claims 1-2 that one can use either one or more supports to support the frame from the support surface. It would have been obvious to one having ordinary skill in the art to provide the support structure of Wilson with one support member as taught by Virta as an art-recognized alternative within the realm of knowledge of one with ordinary skill in the art.

Allowable Subject Matter

13. Claims 6-7 and 13 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. The following is a statement of reasons for the indication of allowable subject matter: The prior art of record fails to

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teach a climbing wall as claimed attached to a pier or pontoon boat. The prior art of record also fails to teach the climbing wall assembly of claims 1-3 and further wherein the frame is attached to the support structure via a mounting plate having a pair of spaced apart tubular receivers, and a triangular bracket on the bottom of each framework leg having a tubular knuckle disposed between the receivers on the mounting plate and a removable hinge pin passed through the aligned receivers and knuckle.

Conclusion

14. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

| | |
|------------|----------------|
| Wilson | U.S. 6,390,952 |
| Ehrenfield | U.S. 4,848,737 |
| Worden | U.S. 534,704 |
| Frost | U.S. 2,556,175 |

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Fenn C Mathew whose telephone number is (703) 305-2846. The examiner can normally be reached on Monday - Friday 9:00am - 5:30pm.

The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

gcm

fcm

May 27, 2004



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